

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PURDUE PHARMA L.P., PURDUE PHARMA
INC., RICHARD SACKLER, THERESA
SACKLER, KATHE SACKLER, JONATHAN
SACKLER, MORTIMER D.A. SACKLER,
BEVERLY SACKLER, DAVID SACKLER, ILENE
SACKLER LEFCOURT, PETER BOER, PAULO
COSTA, CECIL PICKETT, RALPH SNYDERMAN,
JUDITH LEWENT, CRAIG LANDAU, JOHN
STEWART, MARK TIMNEY, and RUSSEL J.
GASDIA,

Defendants.

CIVIL ACTION NO. 1884-CV-01808(B)

**MEMORANDUM OF LAW IN SUPPORT OF THE INDIVIDUAL DIRECTORS'
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
STATEMENT OF JURISDICTIONAL FACTS	4
A. None of the Individual Directors Has Relevant Contacts with Massachusetts.....	5
B. The Commonwealth Cannot Substantiate Its Claim That the Board “Directed” Purdue’s Activities In or Toward Massachusetts.....	9
1. No Individual Director Personally Directed “Misleading” Sales Efforts Toward Massachusetts	11
a. The Individual Directors’ Receipt of Board-Level Information Does Not Show that They Directed Marketing in Massachusetts.....	11
b. The Claim that the Individual Directors “Directed” Marketing in Massachusetts Is Contradicted by the FAC’s Factual Allegations and the Documents the FAC Cites.....	14
c. The FAC’s Individualized Allegations Do Not Demonstrate “Direction” of Misleading Marketing by Any Individual Director	15
2. No Individual Director Approved Funding of Any Massachusetts Doctor’s Misconduct.....	17
3. The Board Did Not Direct Efforts to Affect Massachusetts Legislation ...	17
4. The Individual Directors Did Not Direct Dissemination of Deceptive Marketing Materials in Massachusetts.....	19
5. The Individual Directors Did Not Deceptively Promote Opioids at Massachusetts Medical Institutions	20
6. The Individual Directors Did Not Direct Anyone to Violate the 2007 Judgment	22

ARGUMENT	22
THE COURT LACKS PERSONAL JURISDICTION OVER THE INDIVIDUAL DIRECTORS.....	22
I. THE INDIVIDUAL DIRECTORS’ STATUS AS DIRECTORS OF PPI DOES NOT ESTABLISH PERSONAL JURISDICTION	23
II. THE INDIVIDUAL DIRECTORS ARE NOT SUBJECT TO PERSONAL JURISDICTION UNDER ANY PROVISION OF THE MASSACHUSETTS LONG-ARM STATUTE	24
A. There is No Jurisdiction Under § 3(a) because the Claims Do Not Arise Out of Business that Any Individual Director “Transact[ed]” in Massachusetts.....	24
1. The FAC Does Not Plead any Individual Director’s Personal Involvement in Deceptive Sales and Marketing in Massachusetts	25
2. The FAC’s Allegations Do Not Arise out of Any Individual Director’s Transaction of Business in Massachusetts	27
3. The FAC’s Assertion that the Individual Directors Transacted Business “Through Agents” Is Insufficient to Establish Jurisdiction	27
B. The Individual Directors Did Not Engage in Any Act or Omission in Massachusetts within Section 3(c).....	29
C. The Individual Directors’ Alleged Conduct Does Not Suffice to Confer Jurisdiction Under § 3(d)	32
III. EXERCISING PERSONAL JURISDICTION OVER THE INDIVIDUAL DIRECTORS WOULD VIOLATE DUE PROCESS	37
A. The Individual Directors Are Not Subject to General Personal Jurisdiction.....	38
B. The Individual Directors Are Not Subject to Specific Jurisdiction	38
CONCLUSION.....	42

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Access TCA, Inc. v. Brand Architecture & Mgmt., LLC</i> , No. 060496, 2006 WL 4114313 (Mass. Super. Ct. Nov. 21, 2006)	32
<i>Adamchek v. Costco Wholesale Corp.</i> , No. 08-10182-PBS, 2008 WL 7536878 (D. Mass. June 11, 2008)	29
<i>Amalgamated Bank v. Coca-Cola Co.</i> , No. CIV.A. 1:05-CV-1226-, 2006 WL 2818973 (N.D. Ga. Sept. 29, 2006), <i>aff'd sub nom. Selbst v. Coca-Cola Co.</i> , 262 F. App'x 177 (11th Cir. 2008).....	5
<i>Backman v. Schiff</i> , 84 F.R.D. 132 (D. Mass. 1979).....	36
<i>Biopharma Capital, Ltd. v. Lydon</i> , No. 01-1926, 2002 WL 31957013 (Mass. Super. Ct. Dec. 2, 2002)	35-36
<i>Birbara v. Locke</i> , 99 F.3d 1233 (1st Cir. 1996).....	33
<i>BNSF Ry. Co. v. Tyrrell</i> , 137 S. Ct. 1549 (2017).....	37 n.37
<i>Bradley v. Cheleuitte</i> , 65 F.R.D. 57 (D. Mass. 1974).....	29
<i>Brandi v. Nat'l Bulk Carriers, Inc.</i> , 14 Mass. App. Ct. 916 (1982).....	27
<i>Bristol-Myers Squibb Co. v. Superior Court of Cal.</i> , 137 S. Ct. 1773 (2017).....	37-38 n.37, 39
<i>Cambridge-Lee Indus., Inc. v. Acme Ref. Co.</i> , No. CA-003726, 2005 WL 3047406 (Bos. Mun. Ct. Nov. 8, 2005)	34
<i>Chase-Walton Elastomers, Inc. v. Bennett</i> , No. 02-1304, 2002 WL 31235508 (Mass. Super. Ct. Oct. 1, 2002)	23, 24, 36
<i>Chlebda v. H.E. Fortna & Bro., Inc.</i> , 609 F.2d 1022 (1st Cir. 1979).....	31, 40

<i>Confederate Motors, Inc. v. Terny</i> , 831 F. Supp. 2d 405 (D. Mass. 2011)	39
<i>Conn. Nat’l Bank v. Hoover Treated Wood Prods., Inc.</i> , 37 Mass. App. Ct. 231 (1994).....	36 n.36
<i>Copia Commc’ns, LLC v. AM Resorts, L.P.</i> , 812 F.3d 1 (1st Cir. 2016).....	41
<i>Cunningham v. Ardrex, Inc.</i> , 40 Mass. App. Ct. 279 (1996).....	23 n.29
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014).....	37 n.37, 38
<i>Evans v. Multicon Constr. Corp.</i> , 30 Mass. App. Ct. 728 (1991).....	34
<i>Federated Rural Elec. Ins. Corp. v. Kootenai Elec. Coop.</i> , 17 F.3d 1302 (10th Cir. 1994)	42 n.38
<i>Fern v. Immergut</i> , 55 Mass. App. Ct. 577 (2002).....	36 n.36
<i>Fiske v. Sandvik Mining & Constr. USA, LLC</i> , 540 F. Supp. 2d 250 (D. Mass. 2008)	31
<i>Fletcher Fixed Income Alpha Fund, Ltd. v. Grant Thornton LLP</i> , 89 Mass. App. Ct. 718 (2016).....	26, 35 n.35, 36
<i>Foote v. New Engl. Med. & Surgical Ctr., PLLC</i> , No. ESCV201002045, 2011 WL 12883083 (Mass. Super. Ct. Mar. 14, 2011)	23 n.29
<i>Galletly v. Coventry Healthcare, Inc.</i> , 956 F. Supp. 2d 310 (D. Mass. 2013)	25 n.31
<i>Garcia v. Right at Home, Inc.</i> , No. SUCV20150808BLS2, 2016 WL 3144372 (Mass. Super. Ct. Jan. 19, 2016)....	24 n.30
<i>Ginsberg v. Ginsberg</i> , No. SUCV201700859BLS1, 2017 WL 7693445 (Mass. Super. Ct. Dec. 15, 2017).....	1 n.1
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915 (2011).....	37 n.37, 38

<i>Grice v. VIM Holdings Grp., LLC</i> , 280 F. Supp. 3d 258 (D. Mass. 2017)	24 n.30, 25, 39
<i>Harlow v. Children’s Hosp.</i> , 432 F.3d 50 (1st Cir. 2005)	38-39
<i>Hartsel v. Vanguard Grp., Inc.</i> , C.A. No. 5394-VCP, 2011 WL 2421003 (Del. Ch. June 15, 2011), <i>aff’d</i> , 38 A.3d 1254 (Del. 2012)	34 n.34
<i>Hiles v. Episcopal Diocese of Mass.</i> , 437 Mass. 505 (2002)	1 n.1
<i>Intech, Inc. v. Triple “C” Marine Salvage, Inc.</i> , 444 Mass. 122 (2005)	22, 25
<i>Interface Grp.-Mass., LLC v. Rosen</i> , 256 F. Supp. 2d 103 (D. Mass. 2003)	24 n.30, 27 & n.32, 29
<i>J. McIntyre Mach., Ltd. v. Nicastro</i> , 564 U.S. 873 (2011)	37 n.37, 41
<i>John Gallup & Assocs., LLC v. Conlow</i> , No. 1:12-CV-03779-RWS, 2013 WL 3191005 (N.D. Ga. June 21, 2013)	34 n.34
<i>Johnson Creative Arts, Inc. v. Wool Masters, Inc.</i> , 573 F. Supp. 1106 (D. Mass. 1983), <i>aff’d</i> , 743 F.2d 947 (1st Cir. 1984)	25
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770 (1984)	23, 24, 39
<i>Kleinerman v. Morse</i> , 26 Mass. App. Ct. 819 (1989)	25, 40
<i>Kolikof v. Samuelson</i> , 488 F. Supp. 881 (D. Mass. 1980)	36
<i>Lyons v. Duncan</i> , 81 Mass. App. Ct. 766 (2012)	29, 30
<i>M-R Logistics, LLC v. Riverside Rail, LLC</i> , 537 F. Supp. 2d 269 (D. Mass. 2008)	24 n.30
<i>Malden Transp., Inc. v. Uber Techs., Inc.</i> , 286 F. Supp. 3d 264 (D. Mass. 2017)	28

<i>McCarthy v. Kirby</i> , No. CA944879, 1995 WL 808894 (Mass. Super. Ct. Apr. 19, 1995)	28
<i>Med. Spectroscopy, Inc. v. Zamir</i> , No. 1584CV03390, 2016 WL 4077289 (Mass. Super. Ct. June 14, 2016)	31
<i>Merced v. JLG Indus., Inc.</i> , 193 F. Supp. 2d 290 (D. Mass. 2001)	34
<i>MerlinOne, Inc. v. Shoom, Inc.</i> , No. 0402022, 2005 WL 2524362 (Mass. Super. Ct. July 1, 2005)	36
<i>Morris v. UNUM Life Ins. Co. of Am.</i> , 66 Mass. App. Ct. 716 (2006).....	23, 24, 35
<i>Mouzon v. Radiancy, Inc.</i> , 85 F. Supp. 3d 361 (D.D.C. 2015)	41
<i>New World Techs. Inc. v. Microsmart, Inc.</i> , No. CA943008, 1995 WL 808647 (Mass. Super. Ct. Apr. 12, 1995)	25 n.31, 31
<i>Nichols Assocs., Inc. v. Starr</i> , 4 Mass. App. Ct. 91 (1976).....	23 n.29
<i>Noonan v. Winston Co.</i> , 902 F. Supp. 298 (D. Mass. 1995), <i>aff'd</i> , 135 F.3d 85 (1st Cir. 1998)	32-33
<i>Noonan v. Winston Co.</i> , 135 F.3d 85 (1st Cir. 1998).....	36 n.36
<i>Openrisk, LLC v. Roston</i> , No. 15-P-1282, 2016 WL 5596005 (Mass. App. Ct. Sept. 29, 2016).....	38
<i>Pettengill v. Curtis</i> , 584 F. Supp. 2d 348 (D. Mass. 2008)	27 & n.32, 37, 40
<i>Preferred Mut., Ins. Co. v. Stadler Form AG</i> , 308 F. Supp. 3d 463 (D. Mass. 2018)	40
<i>PS Audio, Inc. v. Allen</i> , Civ. No. 18-00206-WJM-STV, 2018 U.S. Dist. LEXIS 221458 (D. Colo. Aug. 10, 2018), <i>adopted by</i> 2018 U.S. Dist. LEXIS 221457 (D. Colo. Sept. 17, 2018)	42 n.38
<i>Reis v. Spectrum Health Sys., Inc.</i> , No. 15-CV-2348-H, 2016 WL 4582241 (Mass. Super. Ct. Aug. 16, 2016).....	1 n.2

<i>Renaissance Worldwide Strategy, Inc. v. Bridge Strategy Grp., LLC</i> , No. 991150, 2000 WL 1298131 (Mass. Super. Ct. Mar. 1, 2000).....	30
<i>Saeed v. Omex Sys., Inc.</i> , No. 16-CV-11715-ADB, 2017 WL 4225037 (D. Mass. Sept. 22, 2017)	39, 40
<i>SCVNGR, Inc. v. Punchh, Inc.</i> , 478 Mass. 324 (2017)	22, 23, 24
<i>Topik v. Catalyst Research Corp.</i> , 339 F. Supp. 1102 (D. Md. 1972), <i>aff'd</i> , 473 F.2d 907 (4th Cir. 1973).....	28
<i>Vasquez v. Whole Foods Mkt., Inc.</i> , 302 F. Supp. 3d 36 (D.D.C. 2018)	34 n.34
<i>Walden v. Fiore</i> , 571 U.S. 277 (2014).....	36, 37 n.37, 39
<i>Wang v. Schroeter</i> , C.A. No. 11-10009-RWZ, 2011 WL 6148579 (D. Mass. Dec. 9, 2011).....	24 n.30, 39
<i>Whistler Corp. v. Solar Elecs., Inc.</i> , 684 F. Supp. 1126 (D. Mass. 1988)	33
<i>Windsor v. Windsor</i> , 45 Mass. App. Ct. 650 (1998).....	23 n.29
<i>Zises v. Prudential Ins. Co. of Am.</i> , No. CA-80-1886-Z, 1981 WL 27044 (D. Mass. Mar. 10, 1981).....	33

Rules & Statutes

MASS. GEN. LAWS ANN. c. 93A, § 2	4 n.7, 30
MASS. GEN. LAWS ANN. c. 223A, § 3	22, 24, 25, 29, 32
MASS. R. CIV. P. 12(b)	1, 3 n.5, 27-28

Other Authorities

RESTATEMENT (SECOND) OF AGENCY § 14C	28
5 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1281 (3d ed. 2018)	5

Defendants Peter Boer, Paulo Costa, Ilene Sackler Lefcourt, Judith Lewent, Cecil Pickett, Beverly Sackler, David Sackler, Jonathan Sackler, Kathe Sackler, Mortimer D.A. Sackler, Richard Sackler, Theresa Sackler, and Ralph Snyderman (the “**Individual Directors**” of Purdue Pharma Inc. (“**PPI**”)), respectfully submit this Memorandum of Law in Support of their Motion pursuant to Massachusetts Rule of Civil Procedure 12(b)(2) to dismiss the First Amended Complaint (the “**FAC**”) filed by the Attorney General (“**AGO**”) on behalf of the Commonwealth of Massachusetts for lack of personal jurisdiction. The Individual Directors have separately served a Memorandum of Law in Support of their Motion to dismiss the FAC for failure to state a claim pursuant to Massachusetts Rule of Civil Procedure 12(b)(6).

PRELIMINARY STATEMENT¹

The FAC marks the Commonwealth’s second attempt to hale into this Court thirteen current or former directors of PPI—a New York corporation headquartered in Connecticut—without any factual allegations connecting the claims against them to conduct by them in or aimed at Massachusetts. The prolixity of the Commonwealth’s 910 paragraph, 274-page FAC—which is rife with “hundreds of pages of litigational detritus”²—is calculated to obscure this simple truth. There is no allegation that any Individual Director engaged in any conduct giving rise to the AGO’s claim that occurred in, or was directed at, Massachusetts. There is, therefore, no personal

¹ Citations to “¶” refer to the corrected FAC filed on January 31, 2019. “**Ex.**” refers to exhibits to the Affidavit of Robert J. Cordy accompanying this motion, each of which is cited in the FAC and may be relied on in this dismissal motion. *See Ginsberg v. Ginsberg*, No. SUCV201700859BLS1, 2017 WL 7693445, at *1 n.5 (Mass. Super. Ct. Dec. 15, 2017). Any disputed jurisdictional allegations “are entitled to no presumptive weight,” *Hiles v. Episcopal Diocese of Mass.*, 437 Mass. 505, 516 (2002), and any facts derived from the FAC are assumed to be true for the purposes of this motion only. “**Decl. ¶**” refers to the Declarations filed with this motion. Emphasis is added to and internal quotations, brackets and citations are omitted from quoted material in this brief, unless otherwise indicated.

² *Reis v. Spectrum Health Sys., Inc.*, No. 15-CV-2348-H, 2016 WL 4582241, at *1 (Mass. Super. Ct. Aug. 16, 2016).

jurisdiction over any of them.

The 600 paragraphs of “new” factual allegations in the FAC still do not satisfy the Massachusetts’ long-arm statute or the demanding requirements of the personal jurisdiction jurisprudence of the U.S. Supreme Court. None of the Individual Directors lives in Massachusetts, and the FAC contains no factual allegations connecting the claims against them to any personal conduct by them in or aimed at the Commonwealth. The AGO’s jurisdictional argument is still premised almost entirely on the Individual Directors’ *receipt of information* about Purdue’s *nationwide* conduct.³ This is glaringly insufficient.

The Commonwealth attempts to premise individual jurisdiction on Purdue’s activities in the Commonwealth. If the AGO’s theory were sufficient to establish jurisdiction—it is not—the director of any foreign corporation operating in Massachusetts would be subject to the jurisdiction of this Court based on allegations of corporate conduct. Massachusetts law and constitutional requirements are crystal clear, however—directors are not subject to personal jurisdiction on the basis of the activities of the company on whose board they serve. They must personally participate in the alleged corporate conduct in the Commonwealth. There are no factual allegations in the FAC that this ever occurred.

There is one remarkable difference between the FAC and the original complaint—the FAC now purports to rely on, and distorts, hundreds of additional documents, over and above those it distorted in the original complaint. The FAC consistently edits out exonerating portions of the cited documents that flatly contradict the conclusions that the FAC draws. The Individual Directors were in fact repeatedly told that Purdue was in full compliance with its integrity commitments under the 2007 consent judgment Purdue entered into with the Commonwealth (the

³ PPI and Purdue Pharma L.P. (“PPLP”) are collectively referred to as “Purdue.”

“2007 Judgment”) and under its Corporate Integrity Agreement (“**CIA**”) with the federal Office of Inspector General (“**OIG**”)—in Board Reports that the FAC quotes in part but, in quoting, deceptively omits this critical exculpatory information.⁴ Even after its federal monitorship successfully concluded, Purdue regularly certified to the Board—in reports that the FAC selectively quotes and distorts—that the Company remained in full compliance with all legal requirements:



⁴ See Ex. 18 (cited at ¶211 & n.113) at 59

Ex. 87 (cited at ¶208 & n.109) at 5

See also, e.g., Ex. 31 (cited at ¶245 & n.166) at 28

; Ex. 20 (cited at ¶217 & n.120) at 23

Ex. 54 (cited at ¶208 & n.109) at 1

Ex. 64 (cited at ¶208 & n.109) 23-24

Ex. 75 (cited at ¶208 & n.109) at 24

Ex. 79 (cited at ¶208 & n.109) at 33 (same). The one time a problem was detected, it was promptly remediated, demonstrating that the compliance program was operating precisely as intended. See the accompanying Memorandum of Law in Support of the Individual Directors’ Motion to Dismiss (“**12(b)(6) Memorandum**”) pursuant to Mass. R. Civ. P. 12(b)(6) at § II.A.1.

[REDACTED]⁵

These facts vitiate the Commonwealth’s attempt to premise jurisdiction on the claim that the Individual Directors instructed Purdue to violate the 2007 Judgment. (¶860).

Mischaracterizing facts does not change them. The documents on which the FAC relies and the sworn declarations by each Individual Director confirm that, as a factual matter, none of the Individual Directors has contacts with—or engaged in conduct in or aimed at—the Commonwealth that would allow the Court to exercise personal jurisdiction over them. The FAC should be dismissed with prejudice for lack of personal jurisdiction.

STATEMENT OF JURISDICTIONAL FACTS

The Commonwealth’s claims against the Individual Directors are premised on allegedly misleading statements by Purdue regarding OxyContin, a prescription drug that the FDA has determined is safe and effective when used as indicated in the FDA-approved label.⁶

The Claims are based on events allegedly occurring after May 15, 2007—the date the Commonwealth entered into the 2007 Judgment with Purdue (the “**Period**”). (¶¶13, 193; Ex. 16). No Individual Director is alleged to have done anything relevant to the Claims in Massachusetts. The FAC alleges that, in the years following the 2007 Judgment, the Individual Directors “directed” Purdue’s alleged misconduct in Massachusetts related to the marketing and sale of prescription opioids. (¶¶8-9). That conclusory assertion is not supported by factual allegations

⁵ See Ex. 87 (cited at ¶208 & n.109) at 52; *see also, e.g.*, Ex. 92 (cited at ¶208 & n.109) at 49 (same); Ex. 97 (cited at ¶208 & n.109) at 46 (same); Ex. 100 (cited at ¶208 & n.109) at 39 (same).

⁶ The FAC alleges two claims against all defendants—unfair and deceptive acts and practices in violation of Mass. Gen. Laws Ann. (“**G.L.**”) c. 93A, § 2 (Count I, ¶¶890–900) and public nuisance (Count II, ¶¶901–910) (the “**Claims**”). The FAC asserts the same claims against three current or former CEOs of Purdue, who are filing a separate motion to dismiss.

and is contradicted by the Individual Directors' sworn declarations and the documents that the FAC cites. Those documents show that the PPI board periodically *received* reports and other information about Purdue's *nationwide* conduct, some of which occasionally referenced Massachusetts or other states in passing, and that the suggestions of director misconduct alleged in the FAC are groundless.

The 274-page length of FAC cannot be permitted to mask its failure to plead adequate jurisdictional facts. "Unnecessary prolixity in a pleading places an unjustified burden on the [Court] and the party who must respond to it because they are forced to ferret out the relevant material from a mass of verbiage." 5 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1281 (3d ed. 2018). Here, the burden is all the greater because the Commonwealth has relied heavily on the "ill-advised tactic" of pleading by selective quotation of documents, which places on this Court "the burden to comb through [the quoted documents] to check accuracy of both content and context." *Amalgamated Bank v. Coca-Cola Co.*, No. CIV.A. 1:05-CV-1226-, 2006 WL 2818973, at *9 n.7 (N.D. Ga. Sept. 29, 2006) (dismissing complaint that relied on selective quotation), *aff'd sub nom. Selbst v. Coca-Cola Co.*, 262 F. App'x 177 (11th Cir. 2008).

The FAC contains no factual allegation of personal conduct by any Individual Director in, or directed at, Massachusetts that gives rise to the Claims.

A. None of the Individual Directors Has Relevant Contacts with Massachusetts

The FAC does not, and cannot, plead that any Individual Director lives in Massachusetts or had any contacts with Massachusetts that are related to the subject matter of this litigation. No Individual Director currently resides in Massachusetts and none did so during their respective tenures as Directors. During the Period, the Board never met in Massachusetts, and none of the

Individual Directors travelled to Massachusetts for the purpose of business related to Purdue's manufacture, sale or marketing of prescription opioids.⁷

- **Peter Boer** resides in Florida (¶11). The FAC does not allege that he engaged in any activities related to the Claims in Massachusetts.
- **Paulo Costa** resides in Connecticut (¶11; *see also* ¶879). The FAC does not allege that he engaged in any activities related to the Claims in Massachusetts.
- **Ilene Sackler Lefcourt** resides in New York (¶11; *see also* ¶879). The FAC does not allege that she engaged in any activities related to the Claims in Massachusetts.
- **Judith Lewent** resides in Florida (*see* Lewent Decl. ¶2).⁸ The FAC does not allege that she engaged in any activities related to the Claims in Massachusetts. The FAC pleads only that Ms. Lewent was affiliated with certain non-defendant third-parties in Massachusetts, but they are unrelated to Purdue's manufacture, sale, or marketing of prescription opioids (¶885) and are therefore irrelevant.⁹
- **Cecil Pickett** resides in Florida (*see* Pickett Decl. ¶2).¹⁰ The FAC alleges that Mr. Pickett rented an apartment in Massachusetts "from 2007 through 2009" (¶886), before he joined Purdue's board in 2010. (¶527; *see* Pickett Decl. ¶3). Mr. Pickett's declaration confirms his rental lasted from 2006-2009, during which time he worked in Massachusetts for a

⁷ *See* Boer Decl. ¶¶4(a), (d); Costa Decl. ¶¶4(a), (d); Lefcourt Sackler Decl. ¶¶4(a), (d); Lewent Decl. ¶¶4(a), (d); Pickett Decl. ¶¶4(a), (d); B. Sackler Decl. ¶¶4(a), (d); D. Sackler Decl. ¶¶4(a), (d); J. Sackler Decl. ¶¶4(a), (d); K. Sackler Decl. ¶¶4(a), (d); M. Sackler Decl. ¶¶4(a), (d); R. Sackler Decl. ¶¶4(a), (d); T. Sackler Decl. ¶¶4(a), (d); and Snyderman Decl. ¶¶4(a), (d).

⁸ The FAC erroneously pleads that she resides in New Jersey (¶11).

⁹ The FAC states that an annual report of one of these unnamed third-party entities gives a Massachusetts address for Ms. Lewent (¶885), but affirmatively pleads that her residence is in fact outside of Massachusetts. (¶11).

¹⁰ The FAC erroneously pleads that he resides in New Jersey (¶11).

company unrelated to Purdue; he did not intend Massachusetts to be his permanent home; he never obtained a Massachusetts driver's license; and he never lived in Massachusetts after October 2009. (*Id.* ¶2). The FAC does not allege that he engaged in any activities related to the Claims in Massachusetts. The FAC pleads only that Mr. Pickett was affiliated with certain non-defendant, third-parties in Massachusetts that are unrelated to Purdue's manufacture, sale or marketing of prescription opioids. (¶886). This is jurisdictionally irrelevant.

- **Beverly Sackler** resides in Connecticut (¶11; *see also* ¶879). The FAC does not allege that she engaged in any activities related to the Claims in Massachusetts. The FAC pleads only that Beverly Sackler was affiliated with a non-defendant third party that is registered to do business in Massachusetts and is unrelated to Purdue's manufacture, sale, or marketing of prescription opioids. (¶881). This is jurisdictionally irrelevant.
- **David Sackler** resides in New York (¶11; *see also* ¶879). The FAC does not allege that he engaged in any activities related to the Claims in Massachusetts. The FAC pleads only that he invested in a non-defendant, third-party investment fund in Massachusetts that is unrelated to Purdue's manufacture, sale or marketing of prescription opioids. (¶882).
- **Jonathan Sackler** resides in Connecticut (¶11; *see also* ¶879). The FAC does not allege that he engaged in any activities related to the Claims in Massachusetts. The FAC pleads only that he is affiliated with a non-defendant third party registered to do business in Massachusetts that is unrelated to Purdue's manufacture, sale or marketing of prescription opioids. (¶883). This is jurisdictionally irrelevant.
- **Kathe Sackler** resides in Connecticut (¶11; *see also* ¶879). The FAC does not allege that she engaged in any activities related to the Claims in Massachusetts.

- **Mortimer D.A. Sackler** resides in New York (§11; *see also* §879). Mortimer D.A. Sackler did not, as the FAC alleges, live in Massachusetts “through 1999” (§884). He lived in Massachusetts only during the school years from 1989 to 1993, when he attended college there with no intention of making Massachusetts his permanent home. (M. Sackler Decl. §2). Mortimer Sackler owned an apartment in Massachusetts until 1999, but did not reside there after 1993. (*Id.*). All of this is jurisdictionally irrelevant. The FAC does not allege that he engaged in any activities in Massachusetts during the Period, let alone any activities related to the Claims.
- **Richard Sackler** resides in Florida. (§11; *see also* §879). His primary residence was in Connecticut until 2013 and in Texas from 2013 through 2018. (R. Sackler Decl. §2). The FAC pleads that Richard Sackler visited Massachusetts in connection with his activities involving non-defendant, third-parties on matters unrelated to Purdue’s manufacture, sale, or marketing of prescription opioids. (§880). The FAC does not allege he was present in Massachusetts for any purpose related to the Claims. The FAC pleads that, approximately eight years before the Period commenced, he attended a 1999 symposium in Boston for the Tufts Masters of Science in Pain Research, Education, and Policy (§279) that has no alleged connection to the Claims. None of these contacts is jurisdictionally relevant.
- **Theresa Sackler** resides in the United Kingdom (§11; *see also* §879). The FAC does not allege that she engaged in any activities in Massachusetts during the Period.
- **Ralph Snyderman** resides in North Carolina (§11). The FAC does not allege that he engaged in any activities in Massachusetts during the Period. The FAC pleads only that he was affiliated with a non-defendant, third-party in Massachusetts that is unrelated to

Purdue's manufacture, sale, or marketing of prescription opioids. (¶887). This is jurisdictionally irrelevant.

The FAC does not allege that any Individual Director received a payment originating in Massachusetts. It alleges only that the Individual Directors received money from Purdue and then insinuates that this means that they received substantial revenue from Purdue's opioid sales in Massachusetts. (¶¶200, 239, 504, 865-68). The documents cited in support show only that *Purdue* derived revenue from sales in all 50 states. These include (i) a single slide (no. 74) from a 124-page deck for a Board meeting estimating the impact of CDC guidelines on estimated revenues from higher-dose OxyContin in each of fifty states (¶¶239 & n.155, 76 & n.19, citing Ex. 110), and (ii) a spreadsheet tracking prescription data from half a million prescribers nationwide. (¶239 & n.156, citing Ex. 117). Neither establishes that any Individual Director received a payment from Massachusetts or singled out Massachusetts, and neither supports the allegation that any Individual Director was focused on "track[ing] revenue from Massachusetts." (¶¶239, 865-66; Ex. 110 at slide 74; Ex. 117). Nor does either remotely suggest any misconduct.

**B. The Commonwealth Cannot Substantiate Its Claim That the Board
"Directed" Purdue's Activities In or Toward Massachusetts**

The Commonwealth claims that "this action arises from" each Individual Director "knowingly and intentionally" directing "Purdue's illegal scheme" toward Massachusetts by personally engaging in: (1) sales efforts towards Massachusetts; (2) payments to Massachusetts doctors; (3) efforts to affect Massachusetts legislation; (4) distribution of misleading material in Massachusetts; and (5) unfairly promoting opioids at Massachusetts medical institutions. (¶¶159-69, 842, 846-50, 852-60). But the FAC's misleading citations to hundreds of internal Purdue documents provide no factual content. The allegations against the Individual Directors remain conclusory, unsupported and untrue.

The vast majority of the cited documents—indeed, most of the FAC’s allegations concerning the Individual Directors—reflect the Individual Directors as recipients of information about nationwide promotional activity and other business matters reported to them by Purdue staff.¹¹ These documents show corporate conduct. They do not show that any Individual Director targeted Massachusetts, and each of the Individual Directors unequivocally denies that he or she:

- Personally directed Purdue or any of its sales representatives to visit doctors in Massachusetts, send emails for savings cards to Massachusetts practitioners, or violate the 2007 Settlement Agreement and Consent Judgment with Massachusetts;
- Otherwise directed any marketing, sales or promotional activities by PPI, PPLP or any of their subsidiaries or affiliates in Massachusetts; and
- Took any action related to the Claims in Massachusetts.¹²

¹¹ See, e.g., ¶¶202, 204, 206, 207, 210, 211, 213, 214, 216, 217, 219, 223, 234, 235, 236, 241, 244, 245, 246, 248, 249, 250, 252, 254, 255, 256, 257, 259, 260, 261, 262, 263, 266, 269, 272, 289, 290, 291, 293, 294, 296, 298, 299, 300, 302, 303, 304, 306, 307, 310, 311, 312, 313, 314, 317, 319, 320, 321, 322, 323, 324, 325, 326, 335, 336, 337, 338, 339, 340, 341, 342, 343, 345, 346, 347, 349, 350, 360, 361, 362, 364, 365, 367, 368, 371, 374, 376, 379, 383, 384, 385, 387, 388, 390, 391, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 415, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 445, 446, 449, 450, 452, 454, 455, 459, 461, 464, 465, 466, 467, 468, 469, 471, 473, 475, 476, 477, 478, 479, 484, 486, 487, 488, 492, 494, 495, 508, 509, 510, 511, 512, 518, 519, 520, 521, 523, 524, 525, 528, 529, 530, 531, 535, 536, 537, 538, 542, 543, 544, 545, 546, 547, 548, 549, 551, 552, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 567, 568, 569, 570, 571, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 588, and the documents cited in their accompanying footnotes.

¹² See Boer Decl. ¶¶4(c), (e); Costa Decl. ¶¶4(c), (e); Lefcourt Sackler Decl. ¶¶4(c), (e); Lewent Decl. ¶¶4(c), (e); Pickett Decl. ¶¶4(c), (e); B. Sackler Decl. ¶¶4(c), (e); D. Sackler Decl. ¶¶4(c), (e); J. Sackler Decl. ¶¶4(c), (e); K. Sackler Decl. ¶¶4(c), (e); M. Sackler Decl. ¶¶4(c), (e); R. Sackler Decl. ¶¶4(c), (e); T. Sackler Decl. ¶¶4(c), (e); and Snyderman Decl. ¶¶4(c), (e).

1. No Individual Director Personally Directed “Misleading” Sales Efforts Toward Massachusetts

Nothing in the FAC, or in the documents it cites, supports the conclusory allegation that “each” Director “ordered sales reps to go door-to-door, making thousands of visits to doctors in Massachusetts.” (¶¶846, 853).

a. The Individual Directors’ Receipt of Board-Level Information Does Not Show that They Directed Marketing in Massachusetts

The FAC does not show that the Board or any Individual Director “directed” Purdue’s marketing in or toward Massachusetts during the Period. The FAC tries to manufacture an illusion of Massachusetts contacts by referencing plain-vanilla Board materials discussing nationwide topics. For example, the FAC contains more than a dozen paragraphs that summarize quarterly board presentations of anodyne market data—generally, the size of Purdue’s sales force and a total number of sales calls made nationwide—concluding with a statement misleadingly implying that the presentation targeted Massachusetts. A typical example of this technique is ¶335:¹³

In January 2011, staff reported to the Sacklers that a key initiative in Q4 2010 had been the expansion of the sales force. Staff told the Sacklers that Purdue employed 590 sales reps and, during Q4 2010, they visited prescribers 125,712 times. [Footnote 328 (citing Ex. 61 at 4, 5, 35,)]. More than 2,900 of those visits were in Massachusetts. [Footnote 329 (citing Exhibit 1 to the FAC)].

The cited Purdue document does not refer to Massachusetts in any relevant context. Nor is any Purdue document cited for the Massachusetts-specific concluding sentence. That fragment instead

¹³ See also ¶¶249 & n.171, 290 & n.258, 301 & n.269, 317 & n.292, 321 & n.300, 335 & n.329, 345 & n.345, 361 & n.371, 364 & n.376, 367 & n.383, 379 & n.413, 388 & n.433, 391 & n.438, 394 & n.444, 401 & n.453, 406 & n.461, 422 & n.490, 427 & n.498, 436 & n.514, 521 & n.630 (cites board package, which does not mention Massachusetts, and Ex. 1 in same footnote), 540 & n.649, 548 & n.657, 574 & n.689 (cites board package, which does not mention Massachusetts, and Ex. 1 in same footnote), 598 & n.712, 612 & n.728, 617 & n.735, 627 & n.746 (cites board package, which does not mention Massachusetts, and Ex. 1 in same footnote), 635 & n.756, 637 & n.759, 644 & n.769, 650 & n.780, 656 & n.788, 664 & n.797, 679 & n.818, 690 & n.832, 693 & n.836, 720 & n.869.

relies on “Exhibit 1” to the FAC—a list compiled by the Commonwealth from undisclosed sources using an unexplained method. This is highly disingenuous.

Other FAC allegations distort a document’s entirely incidental reference to the Commonwealth. For example, the FAC attacks a marketing analysis for NARCAN, a version of Naloxone (an opioid antidote) manufactured by a third-party company, alleging that it shows the Sacklers “noted that Purdue could profit from government efforts to use NARCAN to save lives, including specifically in Massachusetts.” (¶473, citing Ex. 111). This is misleading in at least four ways. First, the presentation was made by management, not by any member of the Sackler family or the Board. Second, the presentation makes no reference to Massachusetts—it simply appears on a map as one of 30 states that allow sales of Naloxone without a prescription. (Ex. 111 at slide 114.) Third, Purdue never purchased the manufacturer of NARCAN. Fourth, the presentation in fact reflects that Purdue had, to that date, been providing Naloxone free of charge in collaboration with the National Sheriff’s Association’s law enforcement training efforts. (*Id.* at slide 114).

The FAC’s reliance on Massachusetts’ presence on a map is recurring. For example, it alleges that the Individual Directors “knew sales reps would continue to promote opioids in Massachusetts” because “Staff even gave [them] a map of where the remaining sales reps worked, with Massachusetts shaded to show that Purdue would keep visiting prescribers here.” (¶492, citing Ex. 118). What the FAC omits is that all fifty states are shaded because the map shows [REDACTED] (*Id.* see also Ex. 118 at slide 47). Similarly, the FAC alleges that “Staff even gave the Sacklers a map correlating dangerous prescribers in Massachusetts with reports of oxycodone poisonings, burglaries, and robberies.” (¶338, citing Ex. 63 at slide 95). But the referenced map provided information for

more than a third of the United States—in a compliance presentation describing Purdue’s efforts to assist in apprehension of those prescribers and remediate the effects of their conduct. (Id.).¹⁴

The FAC mischaracterizes routine marketing data in Board packages as “disclosure” of misconduct, and then contends that sales representatives (not the Individual Directors) concealed such information “in Massachusetts.” For example, citing a Board Report that contains no mention of Massachusetts, the FAC pleads: “Staff reported to the Sacklers that a key initiative ... was for sales reps to encourage doctors to prescribe OxyContin to elderly patients on Medicare.” (¶418, citing Ex. 97). This allegation completely misrepresents the “key initiative,” which consisted of

[REDACTED]

(Ex. 97 at 15). The FAC then adds, with no citation or any support: “In Massachusetts during 2013, sales reps reported to Purdue that they pushed opioids for elderly patients more than a thousand times. The sales reps did not disclose to doctors in Massachusetts that elderly patients faced greater risks of drug interactions, injuries, falls, and suffocating to death.” (¶418). This is alleged conduct of corporate employees, not conduct of the Individual Directors—indeed, not even conduct reported to them.¹⁵

¹⁴ See also ¶415 & n.477 (“Looking back at sales tactics used in 2013, staff told the Sacklers that a relationship marketing program target[ed] Boston”), citing Ex. 96 at 29, showing “Relationship Marketing Programs” in Boston, *Seattle*, and *Washington*.

¹⁵ Similarly, the FAC describes a Board Report’s marketing analysis of savings cards, and continues—with no citation—to allege that, in 2013, “sales reps did not tell doctors in Massachusetts that savings cards led patients to stay on opioids longer than 60 days, or that staying on opioids longer increased the risk of addiction and death.” (¶420 & n.487 citing Ex. 97 at 15-16, 24-25). There is no basis to attribute this to the Individual Directors.

b. The Claim that the Individual Directors “Directed” Marketing in Massachusetts Is Contradicted by the FAC’s Factual Allegations and the Documents the FAC Cites

The Commonwealth’s conclusory claim that the Board “directed” Purdue’s marketing is irreconcilable with the FAC’s repeated, documented allegations that Individual Directors learned about sales efforts and results after the fact from Purdue staff, who formulated and executed them. (See, e.g., ¶241 (“*staff sent* the Sacklers more ideas about ways to promote Purdue’s opioids”); ¶262 (“*Staff ... reported* to the Sacklers about their newest OxyContin sales campaign”); ¶235 (“*Staff reported* to the Sacklers that the reps had obtained data showing which pharmacies stocked higher strengths of OxyContin, which helped them convince area doctors to prescribe the highest doses”)).¹⁶

Since 2007, the only Board action the FAC factually alleges—aside from distributions and decisions on hiring executive personnel—is voting to expand or compensate the sales force *on a nationwide basis*. (See, e.g., ¶¶215, 223, 240, 250, 259, 268, 314, 325). Board approval of the hiring of company workers is completely legal and proper. There is no factual support for the conclusory allegation that “[f]rom the 2007 convictions until today, the Sacklers ordered Purdue to hire hundreds of sales reps to carry out their deceptive sales campaign.” (¶208). The FAC’s lengthy citation to a single page in each quarterly board report from October 2007 through February 2014 containing the Human Resource Department’s “Sales Force Turnover Projection,” and similar documents thereafter (*id.* n.109), provides no evidence—and does not even suggest—that “the Sacklers,” or any Individual Director, “ordered” Purdue to engage in “deceptive” marketing.¹⁷ To the contrary, documents cited elsewhere in the FAC demonstrate that, as early as

¹⁶ See also, e.g., ¶¶303, 402, 403, 406, 419, 423, 486 (similar allegations about what staff reported to or told Individual Directors).

¹⁷ See, e.g., Ex. 75 at 33; Ex. 87 at 62; Ex. 92 at 59; Ex. 100 at 47.

2012, the marketing department was chafing at Board restraints on hiring. The FAC characterizes a fragment of an email—“[t]hings are not good at the BOD level”—as showing that “Board of Individual Directors (‘BOD’) was not satisfied with the money coming in.” (¶371 & n.395, citing Ex. 72). In reality, the exchange shows a senior marketer complaining that: [REDACTED]

[REDACTED] and the Vice President of Sales and Marketing, Russell Gasdia responding: [REDACTED]

[REDACTED]
(Ex. 72).

For the period starting in 2008, the FAC pleads that the PPI directors Peter Boer, Judith Lewent, Cecil Pickett, Paulo Costa and Ralph Snyderman “voted with the Sacklers to hire hundreds more sales reps to carry out Purdue’s unfair and deceptive sales tactics, including in Massachusetts.” (¶502, citing Ex. 36). The cited Board Minutes, however, contain only a resolution to award merit bonuses and salary increases to staff across Purdue—not just in Marketing. Moreover, nothing in the cited document contains any reference to sales efforts in Massachusetts or to Massachusetts at all. (*See* Ex. 36).¹⁸

**c. The FAC’s Individualized Allegations Do Not Demonstrate
“Direction” of Misleading Marketing by Any Individual Director**

Having cited no evidence that the Board collectively “directed” Purdue’s sales towards Massachusetts—or at all—the FAC proceeds to allege, again without support, that “micromanagement” by “[t]he Sacklers” “was so intrusive that staff begged for relief.” (¶197).

¹⁸ Similarly, ¶503 alleges that the Individual Directors “voted” “to implement incentive compensation policies that aggressively drove opioid sales, by placing outsized emphasis on prescription volume rather than compliance, including in Massachusetts.” The cited documents are board resolutions to [REDACTED] not just the sales force, without reference to sales or volumes or even Massachusetts. Ex. 84 at 3441; Ex. 86.

The FAC alleges, for example, that “[t]he Sacklers continued to set a target for daily sales visits for every sales rep, and they tracked the results, quarter by quarter, for at least the next four years.” (¶299 n.267, citing Ex. 50 at 4). The cited documents do not support this claim. They are presentations to the Board of routine summaries of sales targets developed by — and credited to — Purdue’s marketing department. (Ex. 50 at 4). There is no input from “the Sacklers,” the Board, or any Individual Director.

The FAC falsely portrays Richard Sackler as the chief micromanager, primarily through misleadingly selective quotations from emails. For example, the FAC pleads that Richard Sackler responded to some data he received on a Sunday “with detailed instructions for new data that he wanted that same day” (¶230). The underlying email shows that, in response to an email he received on Sunday morning, he politely wrote: [REDACTED]

[REDACTED] (Ex. 25 at 4204-05). This is a perfectly appropriate email from a director. The employee, who allegedly “pleaded with Richard: ‘I have done as much as I can’” (¶230) simply wrote back to Richard Sackler that he had limited time to work that day because he had family visiting. (Ex. 25 at 4204). The FAC portrays Richard Sackler as unreasonable for leaving the employee a voicemail that day (¶230), but omits that the employee invited Richard Sackler to call him. (Ex. 25 at 4206 ([REDACTED]) The FAC is littered with similar selective quotations straining to characterize unremarkable emails with no connection to Massachusetts as some kind of evidence of wrongdoing.¹⁹

¹⁹ The FAC also devotes three paragraphs to the suggestion that Richard Sackler “went into the field to promote opioids to doctors alongside a sales rep” in 2011. (¶¶354-56.) But that field visit did not take place and, during the Period, Richard Sackler “never went into the field with sales representatives to promote opioids to doctors on behalf of either Purdue Defendant in Massachusetts.” (R. Sackler Decl. ¶4(f)).

2. No Individual Director Approved Funding of Any Massachusetts Doctor's Misconduct

Nothing in the FAC, or in any document it cites, supports the conclusory allegation that each Individual Director “directed payments to Massachusetts doctors such as Walter Jacobs in exchange for the doctors’ promotion of Purdue drugs.” (¶¶847, 854). The FAC does not include any factual allegation regarding how any Individual Director supposedly approved or directed a payment to Dr. Jacobs or any other Massachusetts-based provider. Nor could it, because none of the documents cited in the FAC provides any evidence of such alleged conduct.

Instead, the FAC resorts to the conceit of discussing nationwide conduct as if it were targeted at Massachusetts. For example, the FAC claims “the Sacklers and staff discussed federal sunshine legislation” relevant to Purdue payments to “doctors in Massachusetts” and that “[s]ome of the Sacklers were concerned that doctors would be ‘much less willing’ to work for Purdue if the payments were disclosed.” (¶267 & n.208, citing Ex. 44). The email exchange cited actually shows that Richard Sackler was confused by an article the CEO sent him about the federal legislation, which prompted the CEO to explain that [REDACTED] — at a Board meeting Richard Sackler had missed — [REDACTED]. (See Ex. 44 at 4702). Nothing in the exchange refers to Massachusetts or is jurisdictionally relevant.

3. The Board Did Not Direct Efforts to Affect Massachusetts Legislation

There is no support for the allegation that the Individual Directors “directed and/or managed efforts to advance favorable legislation and block unfavorable lawmaking in Massachusetts that would impact Purdue’s sales in the Commonwealth.” (¶848). In every allegation concerning lobbying, the FAC makes it clear that the Board was merely informed of efforts recommended or initiated by others. (See, e.g., ¶405 (“staff told the Sacklers that Purdue

defeated legislation to restrict OxyContin in Massachusetts”); ¶439 (“Purdue’s CEO reported to the Sacklers on Purdue’s work to influence legislation to maximize Purdue’s sales in Massachusetts”); ¶581 (“As in the past, staff informed Boer, Lewent, Pickett, Costa, and Snyderman, about specific developments in Massachusetts”)).²⁰ There is no evidence that any Individual Director “directed and/or managed efforts” aimed at affecting Massachusetts legislation. Instead:

- The FAC relies on reports given to the Board, reporting on lobbying by or legislation affecting Purdue. Most of the documents cited in the FAC show that the Purdue staff was updating the Board on lobbying efforts and legislation nationally, internationally, and in a number of states, including Massachusetts.²¹
- The Commonwealth criticizes Richard Sackler for describing as “[g]ood news” legislation that Massachusetts passed in order to stem opioid abuse by prohibiting [REDACTED] (¶439 & nn.520-21, citing Ex. 103 at 6225). There is no allegation that Richard Sackler personally played any role in lobbying for that legislation, or that the legislation is relevant to the Claims of misleading marketing. Expressing an opinion is not jurisdictionally relevant.
- The FAC attempts to portray Richard Sackler as playing a role in lobbying by alerting staff to legislation in Massachusetts. (¶417 & n.483, citing Ex. 98). But the cited document is an email Richard Sackler sent to a member of Purdue’s staff that contained nothing but a link to a news article that had been auto-forwarded by a Google Alert. The email prompted two members of Purdue’s staff to discuss whether [REDACTED] confirming his lack of involvement. (Ex. 98 at 3992).

²⁰ See also ¶¶296, 402, 410, 479, 546, 565, 683, 688, 768, 774 (similar allegations about what members of Purdue’s staff or management told the Individual Directors).

²¹ See ¶405 & n.459, citing Ex. 92 at 17, 52 (noting that emails would be sent to Massachusetts healthcare providers informing them that savings cards had become lawful to use in Massachusetts and showing an External Affairs Department summary of lobbying efforts in four states, including Massachusetts); ¶565 & n.676 (same); ¶479 & n.581, citing Ex. 112 at slide 21 (showing Massachusetts among four states passing laws limiting opioids, and *also* discussing legislation in an additional 31 states); ¶581 & n.697 citing Ex. 100 at 42-43 (discussing federal legislation, Medicare regulations, Canadian law, and legislation in Ohio and the District of Columbia, as well as Massachusetts).

4. The Individual Directors Did Not Direct Dissemination of Deceptive Marketing Materials in Massachusetts

There is no factual support for the allegation that Individual Directors “directed the dissemination of tens of thousands of copies of unfair or deceptive marketing materials to health care providers throughout the Commonwealth to get more and more patients on Purdue’s drugs for longer and longer periods of time at high and higher doses.” (§§849, 856). No cited document shows any Individual Director “directing dissemination” of deceptive marketing materials, or for that matter, any marketing materials whatsoever. More accurately, the FAC contradictorily alleges—repeatedly—that the Board learned about marketing communications only *after the fact*.²²

Nothing in the FAC supports the suggestion that any marketing materials, deceptive or otherwise, targeted Massachusetts in particular. For example, the FAC alleges that two “misleading publications” were sent “to doctors in Massachusetts.” (§205 & n.105, citing Ex. 57). The cited documents show that the publications were disseminated nationwide—in 47 and 46 states, respectively. (Ex. 57 at 7083, 7084). Similarly, the allegation that “Staff ... told the Sacklers that they promoted Purdue opioids in Massachusetts in ... presentation[s] ... at Tufts University [and] the Tufts Health Care Institute” (§246 & n.167, citing Ex. 31) is a gross mischaracterization. The allegation cites a Board Report that gave a list of “Health Policy” “Meetings & Presentations” that had happened in the previous quarter and that listed events occurring in six cities. The Tufts presentation was entitled “The Assessment and Management of Chronic Pain with an Emphasis on the Appropriate Use of Opioid Analgesic.” (Ex. 31 at 20-21). There is no suggestion of misconduct or promotion.

²² See §§204, 246, 393, 397, 424, 580, 688 (allegations about what staff told or reported to the Individual Directors).

5. The Individual Directors Did Not Deceptively Promote Opioids at Massachusetts Medical Institutions

There is no support for the Commonwealth's allegation that each Individual Director, "[t]hrough targeted funding and programming ... unfairly and deceptively promoted opioids at Massachusetts medical institutions including Tufts University and Massachusetts General Hospital." (¶¶850, 857). The FAC makes no factual allegations and cites no documents tying any Individual Director to communications regarding prescription opioids with Tufts, Massachusetts General Hospital ("MGH") or any other Massachusetts medical institution during the Period, much less to this unspecified deceptive promotion. Nor does it plead that the Individual Directors otherwise participated in making any misleading statements about prescription opioids to Massachusetts medical institutions. There is nothing deceptive about giving a grant to a medical institution.

Many of the allegations about the Individual Directors' connections with MGH or Tufts allege visits or donations in 2000 or earlier that have no ostensible connection to the Claims.²³ The more recent allegations are also immaterial: The FAC alleges that "Richard Sackler arranged for a Tufts professor to meet with Purdue staff in 2012" (¶285),²⁴ and that in 2016, Richard "told staff to circulate a New York Times story reporting" on opioids which quoted a Tufts professor

²³ See ¶279 ("Kathe Sackler co-presided over the [1999] decision to fund the MSPREP Program" and Richard Sackler allegedly "attended the [1999] launch symposium in Boston and paid Tufts hundreds of thousands of dollars"); ¶281 (in 2000, a Purdue grant officer sent Richard a memo about a Tufts site visit); ¶284 (in 2000, "Richard Sackler communicated with the Director of the MSPREP Program, encouraged him to visit Purdue's offices, and offered to send Purdue marketing staff to visit him in Boston").

²⁴ The underlying email reflects that the professor wanted to give a presentation to Purdue's [REDACTED] (Ex. 76 at 8291, 8292, cited at ¶285 n.249) and suggests no connection between the professor's request to talk at Purdue and Purdue's marketing of opioids.

who was not opposed to prescribing them (¶472). Neither of these allegations has any connection to the Commonwealth's claims of alleged deceptive marketing in Massachusetts.²⁵

Similarly, the FAC's allegations that the Individual Directors knew about or approved Purdue's gift of money to various institutions in Massachusetts (¶¶252, 273-79) are also jurisdictionally irrelevant because there are no facts or documents linking Purdue's donations to the Commonwealth's Claims. The insinuation that Purdue's funding of Tufts and MGH might have undermined the independence of some of Massachusetts' finest institutions is not supported by any specific factual allegations of impropriety by those institutions, or by any document cited by the FAC.

Many of the FAC's allegations regarding Purdue's charitable giving follow the Commonwealth's misleading practice of describing the Individual Directors' receipt of documents describing Purdue's nationwide activities as if the documents were focused on Massachusetts. For example, the FAC alleges that in 2009 Kathe Sackler received information from staff that mentioned Purdue's grants and donations of \$691,000 at three Massachusetts institutions (¶252). The actual document she received referred to tens of millions of dollars in gifts to hundreds of organizations including colleges and graduate schools (including non-medical schools), hospitals, clinics, arts, science and advocacy organizations, and law enforcement groups, located throughout the United States. (¶252 & n. 177, citing Exs. 33, 34).²⁶ The documents cited in the FAC show

²⁵ The FAC also alleges that "[t]he Sacklers sent CEO John Stewart to Boston to network with MGH doctors." ¶278. The cited document makes no mention of any of the Individual Directors. (Ex. 60, cited at ¶278 n.228).

²⁶ Compare ¶323 (alleging that Purdue made grants to 13 Massachusetts institutions amounting to \$281,885), with Exs. 58, 59 (cited ¶323 n.303) (describing nearly [REDACTED] in approved grants to hundreds of medical, educational and other organizations across the United States, and Israel).

that Purdue's support for esteemed institutions was *national* in scope, not targeted towards Massachusetts.

6. The Individual Directors Did Not Direct Anyone to Violate the 2007 Judgment

There is no support for the Commonwealth's conclusory allegation that each Individual Director "directed or caused Purdue to violate the 2007 Judgment of this Court." (¶860.) The FAC does not identify any action by any Individual Director, or the Board, that caused Purdue to violate the 2007 Judgment. Nor does it plead that any Individual Director directed anyone to violate the 2007 Judgment. None did.²⁷ To the contrary, the documents cited in the FAC show that the Individual Directors were told repeatedly that Purdue was complying with its obligations under the 2007 Judgment and related agreements. *Supra* at 2-4 & nn.4, 5.

ARGUMENT

THE COURT LACKS PERSONAL JURISDICTION OVER THE INDIVIDUAL DIRECTORS

Before exercising personal jurisdiction over out-of-state defendants, "a judge must determine that doing so comports with both the forum's long-arm statute and the requirements of the United States Constitution." *SCVNGR, Inc. v. Punchh, Inc.*, 478 Mass. 324, 325 (2017). The plaintiff bears the burden of establishing facts to show that the requirements of Massachusetts' long-arm statute, G.L. c. 223A, § 3 ("Section 3" or "§ 3"), and constitutional due process are both satisfied. *See Intech, Inc. v. Triple "C" Marine Salvage, Inc.*, 444 Mass. 122, 125 (2005); *SCVNGR, Inc.*, 478 Mass. at 325 n.3. "Because the long-arm statute imposes specific constraints on the exercise of personal jurisdiction that are not coextensive with the parameters of due process,

²⁷ See Boer Decl. ¶4(c); Costa Decl. ¶4(c); Lefcourt Sackler Decl. ¶4(c); Lewent Decl. ¶4(c); Pickett Decl. ¶4(c); B. Sackler Decl. ¶4(c); D. Sackler Decl. ¶4(c); J. Sackler Decl. ¶4(c); K. Sackler Decl. ¶4(c); M. Sackler Decl. ¶4(c); R. Sackler Decl. ¶4(c); T. Sackler Decl. ¶4(c); and Snyderman Decl. ¶4(c).

and in order to avoid unnecessary consideration of constitutional questions, a determination under the long-arm statute is to precede consideration of the constitutional question.” *SCVNGR, Inc.*, 478 Mass. at 325. Massachusetts courts regularly dismiss if the plaintiff fails to meet its *prima facie* burden of establishing personal jurisdiction.²⁸

The FAC fails to meet the *prima facie* burden of providing factual allegations that satisfy both the long-arm and constitutional requirements for jurisdiction over each Individual Director.

I. THE INDIVIDUAL DIRECTORS’ STATUS AS DIRECTORS OF PPI DOES NOT ESTABLISH PERSONAL JURISDICTION

Lacking any basis to establish that any Individual Director personally engaged in suit-related conduct in or aimed at Massachusetts, the Commonwealth purports to predicate jurisdiction over them on the alleged conduct of Purdue. This fails as a matter of law. The “general rule is that jurisdiction over the individual officers of a corporation may not be based merely on jurisdiction over the corporation.” *Chase-Walton Elastomers, Inc. v. Bennett*, No. 02-1304, 2002 WL 31235508, at *4 (Mass. Super. Ct. Oct. 1, 2002); *see generally Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) (head of company not subject to personal jurisdiction based on corporate conduct because “jurisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him”—it must be established separately); *Morris v. UNUM Life Ins. Co. of Am.*, 66 Mass. App. Ct. 716, 720 (2006) (“[J]urisdiction over a corporation does not automatically secure jurisdiction over its officers or employees.”).

The FAC attempts to evade this dispositive case law by alleging that the Individual Directors received reports and other materials, and participated in board votes, regarding Purdue’s

²⁸ *See, e.g., Windsor v. Windsor*, 45 Mass. App. Ct. 650, 656 (1998); *Nichols Assocs., Inc. v. Starr*, 4 Mass. App. Ct. 91, 97 (1976); *Cunningham v. Ardrex, Inc.*, 40 Mass. App. Ct. 279, 283 (1996); *Foote v. New Engl. Med. & Surgical Ctr., PLLC*, No. ESCV201002045, 2011 WL 12883083, at *4 (Mass. Super. Ct. Mar. 14, 2011).

nationwide activities—and then asserting that this is tantamount to “overs[eeing]” and “direct[ing]” conduct in the Commonwealth. This would subject every director of every national corporation to jurisdiction here, provided that the corporation itself is subject to jurisdiction here. There is no support for this proposition, and it is irreconcilable with *Chase-Walton*, *Keeton*, *Morris*, and the many cases discussed below.²⁹

II. THE INDIVIDUAL DIRECTORS ARE NOT SUBJECT TO PERSONAL JURISDICTION UNDER ANY PROVISION OF THE MASSACHUSETTS LONG-ARM STATUTE

The FAC fails to satisfy any of the three sections of the long-arm statute that it invokes— §§ 3(a), (c) and (d) of General Law chapter 223A. ¶¶842-73. *See SCVNGR, Inc.*, 478 Mass. at 329 (“a judge would be required to decline to exercise jurisdiction if the plaintiff was unable to satisfy at least one of the statutory prerequisites”).

A. There Is No Jurisdiction Under § 3(a) because the Claims Do Not Arise Out of Business that Any Individual Director “Transact[ed]” in Massachusetts

The FAC fails to satisfy § 3(a) because the Individual Directors did not participate, personally or through an agent, in Purdue’s marketing of prescription opioids in Massachusetts. (¶¶842-51). Section 3(a) provides that a “court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action . . . arising from the person’s (a) transacting

²⁹ *See also, e.g., Garcia v. Right at Home, Inc.*, No. SUCV20150808BLS2, 2016 WL 3144372, at *2 (Mass. Super. Ct. Jan. 19, 2016) (“that [defendants] controlled and/or managed RAH . . . is not enough for jurisdictional purposes”); *Grice v. VIM Holdings Grp., LLC*, 280 F. Supp. 3d 258, 278 (D. Mass. 2017) (“Massachusetts courts have required more than mere participation in the corporation’s affairs in order to assert personal jurisdiction”); *Wang v. Schroeter*, C.A. No. 11-10009-RWZ, 2011 WL 6148579, at *5 (D. Mass. Dec. 9, 2011) (“[A] defendant’s status as a corporate officer alone is insufficient to show the minimum contacts required to establish personal jurisdiction over him.”); *M-R Logistics, LLC v. Riverside Rail, LLC*, 537 F. Supp. 2d 269, 279 (D. Mass. 2008) (“[J]urisdiction over the individual officers of a corporation may not be based on jurisdiction over the corporation.”); *Interface Grp.-Mass., LLC v. Rosen*, 256 F. Supp. 2d 103, 105 (D. Mass. 2003) (“It is well established that jurisdiction over a corporate officer may not be based on the jurisdiction over the corporation itself.”).

any business in this Commonwealth” G.L., c. 223A, § 3(a). To meet § 3(a), “the facts must satisfy two requirements—[1] the defendant must have transacted business in Massachusetts, and [2] the plaintiff’s claim must have arisen from the transaction of business by the defendant.” *Intech, Inc.*, 444 Mass. at 126. Nothing in the FAC meets these requirements.

1. The FAC Does Not Plead any Individual Director’s Personal Involvement in Deceptive Sales and Marketing in Massachusetts

Under § 3(a), jurisdiction over a corporate director may be asserted only if the alleged harm arises out of a director’s personal involvement in business transacted in Massachusetts. *See, e.g., Kleinerman v. Morse*, 26 Mass. App. Ct. 819, 824 (1989) (“Although jurisdiction over a corporation does not automatically secure jurisdiction over its officers, active entrepreneurial or managerial conduct in the State where jurisdiction is asserted will cause jurisdiction to attach.”). Without sufficiently detailed allegations “to persuade a court that [each] defendant was a primary actor in the specific matter in question—conclusory allegations that the defendant controls the corporation”—here, ¶¶8, 159, 161, 170, 173, 187, 196, 200, 437, 480, 500, 817—“are not sufficient.” *Grice*, 280 F. Supp. 3d at 279; *accord Johnson Creative Arts, Inc. v. Wool Masters, Inc.*, 573 F. Supp. 1106, 1111 (D. Mass. 1983) (“conclusory allegation that the individual defendants own and control the corporate defendant is insufficient to show that they transacted business in Massachusetts.”), *aff’d*, 743 F.2d 947 (1st Cir. 1984).³⁰

³⁰ *See also New World Techs. Inc. v. Microsmart, Inc.*, No. CA943008, 1995 WL 808647, at *3 (Mass. Super. Ct. Apr. 12, 1995) (treasurer and stockholder of corporation had not “transacted business” in Massachusetts in the “absence of any specific evidence that [she] took part in any decision-making or activities of substance relating to” the agreement in dispute with Massachusetts party); *Galletly v. Coventry Healthcare, Inc.*, 956 F. Supp. 2d 310, 314 (D. Mass. 2013) (court lacks personal jurisdiction where plaintiff’s “vague allegations do not suggest that [defendant] played any specific role” in alleged misconduct in Massachusetts).

The FAC's § 3(a) allegations (¶¶842-51) do not plead any Individual Director's personal involvement in Purdue's alleged sales and marketing of prescription opioids in Massachusetts. Rather, the FAC seeks to predicate § 3(a) jurisdiction on conclusory allegations that the Individual Directors "voted for and/or ordered" or "directed and/or managed" Purdue business activities. (*See, e.g.*, ¶¶846, 848). They represent a transparent attempt to predicate personal jurisdiction over directors based solely on the corporation's acts.

Far from alleging any relevant conduct by any Individual Director aimed at Massachusetts, the FAC's allegations show, at most, that the Individual Directors (i) received information concerning Purdue's nationwide operations that included Massachusetts and (ii) were informed of Purdue's outreach to medical institutions and legislative efforts in Massachusetts and other states *See supra* at 9-22. To the extent any allegations concern specific conduct by any Individual Director, none is sufficient under § 3(a). None establishes personal participation by any Individual Director in Purdue's prescription opioid marketing activities in the Commonwealth.

Other allegations relate to irrelevant conduct that is not alleged to have occurred in or have been directed at Massachusetts. For example, allegations that in 2011 Richard Sackler "went into the field to promote opioids to doctors alongside a sales rep" are not alleged to have happened in Massachusetts (¶356; ¶¶354-55), and, in fact, did not happen at all. (*See* R. Sackler Decl. ¶4(f)). Another allegation involved attendance at a symposium, in the 1990s. (*See* ¶279; Ex. 9). None of this is sufficient under § 3(a), which requires business transactions by the Individual Directors in the Commonwealth, not mere knowledge that others are acting for the corporation here. *See Fletcher Fixed Income Alpha Fund, Ltd. v. Grant Thornton LLP*, 89 Mass. App. Ct. 718, 723 (2016) (auditing firm's "knowledge that [its client] would send" audit reports it had prepared "to Massachusetts does not constitute a contact with Massachusetts sufficient to support jurisdiction")

under § 3(a)); *Lyle Richards Int'l, Ltd v. Ashworth, Inc.*, 132 F.3d 111, 112-15 (1st Cir. 1997).

2. The FAC's Allegations Do Not Arise out of Any Individual Director's Transaction of Business in Massachusetts

The FAC also fails to satisfy Section 3(a) because it does not establish that any of the allegations in the FAC were the “but for” result of any action by any Individual Director. A claim arises from a transaction of business under § 3(a) “when it would not have arisen ‘but for’ the transaction of business in the commonwealth.” *Pettengill v. Curtis*, 584 F. Supp. 2d 348, 356 (D. Mass. 2008). The FAC identifies no opioid-related conduct in or aimed at Massachusetts by any Individual Director, much less any action that is a “but for” cause of any of the Claims.³¹

In the approximately 500 paragraphs pertaining to the Individual Directors, there is not one specific allegation—let alone citation to any evidence—of any Individual Director's personal participation in the transaction of business alleged to give rise to this action. The but-for causation requirement is, therefore, unsatisfied. *See Pettengill*, 584 F. Supp. 2d at 356-57; *Interface Grp.-Mass.*, 256 F. Supp. 2d at 107-08.

3. The FAC's Assertion that the Individual Directors Transacted Business “Through Agents” Is Insufficient to Establish Jurisdiction

The FAC's boilerplate allegation that the Individual Directors transacted business “through agents” in Massachusetts does not satisfy Section 3(a). (*See* ¶842). The FAC fails to specify who these agents are, how the agency relationship was established, and what role these agents supposedly played in transacting business on behalf of the Individual Directors in Massachusetts. *See, e.g., Brandi v. Nat'l Bulk Carriers, Inc.*, 14 Mass. App. Ct. 916, 917 (1982) (granting Rule

³¹ While the FAC alleges some actions by Individual Directors in Massachusetts unrelated to Purdue's prescription opioid business, it does not even attempt to plead jurisdiction under § 3(a) based on any of them. Any contacts with the Commonwealth that did not give rise to the allegations in the FAC cannot support jurisdiction under § 3(a). *See Pettengill*, 584 F. Supp. 2d at 356-57; *Interface Grp.-Mass.*, 256 F. Supp. 2d at 107-08.

12(b)(2) motion because plaintiff failed to provide factual support for allegation that the defendant transacted business through an agent); *McCarthy v. Kirby*, No. CA944879, 1995 WL 808894, *2 (Mass. Super. Ct. Apr. 19, 1995) (granting Rule 12(b)(2) motion where plaintiff failed to “produce affirmative proof of an agency relationship”). To credit any such theory would be tantamount to holding the Individual Directors liable for Purdue’s alleged acts absent the mandatory showing that the Individual Directors were primary participants in the wrongdoing (*supra* Section I). The Commonwealth does not plead that Purdue was somehow the agent of the Individual Directors, nor could it: To the contrary, “the board of directors as a body closely resembles an agent” *of the corporation*. RESTATEMENT (SECOND) OF AGENCY § 14C, cmt. a; *see also id.* cmt. b (discussing the circumstances under which individual directors might be considered an agent of a corporation). Moreover, corporate employees are agents of the corporation, not the directors. *Topik v. Catalyst Research Corp.*, 339 F. Supp. 1102, 1106 (D. Md. 1972), *aff’d*, 473 F.2d 907 (4th Cir. 1973).

Malden Transportation, Inc. v. Uber Technologies, Inc., 286 F. Supp. 3d 264 (D. Mass. 2017), is directly on point. In that case, the plaintiffs alleged that Uber Technologies and two of its founders, who also served as directors, violated the Massachusetts Consumer Protection Act and common law. The Court held that it lacked personal jurisdiction over the individuals because the fact they sat on Uber’s Board did not convert Uber into their agent based on Uber’s acts in Massachusetts:

Personal jurisdiction over an employee does not follow from the fact jurisdiction over the employer exists. Instead, there must be an independent basis for jurisdiction based on an individual’s actions. Plaintiffs fail to allege facts that demonstrate a nexus between the individual defendants’ contacts and the plaintiff’s cause of action. No specific facts with regard to [Uber’s founder] are alleged beyond the claim that he founded (and is a director of) Uber and that he resides in California. Plaintiffs attempt to attribute the acts of Uber to [defendant] through principles of agency law. They fail to allege, however, a single fact indicating that [defendant] made decisions about Uber’s operations in Massachusetts or even traveled to the Commonwealth.

Id. at 271. That is precisely the situation here. Notwithstanding its inclusion of over 980 footnotes citing documents, the FAC does not allege a single fact indicating that any Individual Director made decisions about Purdue’s operations related to prescription opioid marketing in Massachusetts. *See also Interface Grp.-Mass.*, 256 F. Supp. 2d at 107-108 (court lacked personal jurisdiction over the defendant CEO even though he had made occasional trips to Massachusetts and placed numerous telephone calls to the plaintiff’s Massachusetts-based counsel because “[t]here is simply too tenuous a nexus between” the defendant’s Massachusetts contacts and the plaintiff’s alleged injuries). Nor does the FAC allege that the Individual Directors entered into any agency relationship with anyone regarding either Purdue’s marketing of opioids, or regarding anything else. None did. There is thus no basis, actual or alleged, on which to premise long-arm jurisdiction pursuant to § 3(a).

B. The Individual Directors Did Not Engage in Any Act or Omission in Massachusetts within Section 3(c)

The FAC fares no better in asserting long-arm jurisdiction under § 3(c). (*See* ¶¶852-61). Section 3(c) authorizes the Court to exercise personal jurisdiction “arising from the person’s . . . causing tortious injury by an act or omission in this commonwealth.” G.L. c. 223A, § 3(c). To satisfy § 3(c), the Commonwealth must establish (1) a tortious injury in Massachusetts caused by (2) acts that each (or any) Individual Director took in, or “purposefully directed at,” Massachusetts. *Adamchek v. Costco Wholesale Corp.*, No. 08-10182-PBS, 2008 WL 7536878, at *6 (D. Mass. June 11, 2008) (Report and Recommendation adopted in relevant part).

As a threshold matter, the FAC does not satisfy § 3(c) because it does not allege a tortious injury caused by any act of any Individual Director in Massachusetts or that they committed an intentional tort specifically aimed at Massachusetts. *Lyons v. Duncan*, 81 Mass. App. Ct. 766, 770 (2012) (negligence not enough); *Bradley v. Cheleuitte*, 65 F.R.D. 57, 60-61 (D. Mass. 1974)

(same). Omissions by non-residents outside of the Commonwealth do not satisfy § 3(c). To the extent the Commonwealth's claims sound in negligence or any other state of mind short of intentionality, they fail under § 3(c). *See Lyons*, 81 Mass. App. Ct. at 770 (§ 3(c) “distinguishes between intentional and negligent acts”).

Count II sounds in negligence. It asserts a nuisance claim against the Individual Directors expressly grounded on conduct that allegedly “was unreasonable in light of the lack of scientific support for [Purdue's] claims and was negligent and reckless with regard to the known risks of Purdue's drugs.” (¶¶902, 910).

As to Count I, even assuming *arguendo* that there could be circumstances in which a claim under G.L. c. 93A, § 2 (“**Chapter 93A**”) could be considered a tort claim on which jurisdiction under § 3(c) could be based, the FAC's conclusory and unsupported allegations fail to show that any Individual Director engaged in any intentional tortious acts at all, let alone acts aimed at Massachusetts. *See Renaissance Worldwide Strategy, Inc. v. Bridge Strategy Grp., LLC*, No. 991150, 2000 WL 1298131, at *6 (Mass. Super. Ct. Mar. 1, 2000) (§ 3(c) not satisfied “even assuming that [Chapter 93A and other claims] established a prima facie tort” because plaintiff “failed to demonstrate that [defendant's] tortious behavior occurred in Massachusetts.”).

Section 3(c) jurisdiction is also wanting for three additional reasons:

First, the FAC (¶¶853-57) premises § 3(c) jurisdiction on the same inadequate and conclusory allegations that the Individual Directors “directed” Purdue marketing activities, when in reality the Individual Directors merely received updates, usually after the fact, from Purdue's marketing department. *See supra* at 9-10, 14-15, 19-20. As with § 3(a), “[w]here the defendant is a non-resident corporate officer, the plaintiff must also make some showing of direct personal

involvement by the corporate officer in some action which caused the tortious injury.” *New World Techs.*, 1995 WL 808647, at *2 (holding section 3(c) not satisfied as to certain defendants).

Second, allegations that Individual Directors “directed or caused Purdue to violate” the 2007 Judgment issued by this Court (¶¶858-60) are wholly conclusory. The FAC never specifies how any of the Individual Directors supposedly “directed” Purdue to violate the 2007 Judgment and cites no evidence for its conclusory allegations. There is no factual basis for them.³²

Third, to the extent any Claim against the Individual Directors is based on an alleged failure to supervise, warn, or otherwise act (*see, e.g.*, ¶¶159, 203, 489), that “omission, *viz.*, a failure to act,” took place outside of Massachusetts, was not directed at the Commonwealth and therefore does not support long-arm jurisdiction under § 3(c). *Chlebda v. H.E. Fortna & Bro., Inc.*, 609 F.2d 1022, 1023-24 (1st Cir. 1979); *see also Fiske v. Sandvik Mining & Constr. USA, LLC*, 540 F. Supp. 2d 250, 254 (D. Mass. 2008) (under § 3(c) “a failure to act outside the state cannot be considered an act or omission in Massachusetts” (emphasis omitted)); *see also Med. Spectroscopy, Inc. v. Zamir*, No. 1584CV03390, 2016 WL 4077289, at *2 (Mass. Super. Ct. June 14, 2016).

While the FAC purports to “identif[y] the individuals who are personally responsible for Purdue’s illegal scheme” and summarily alleges that “the individual defendants made the decisions to break the law; they controlled the unfair and deceptive conduct; and they personally collected many millions of dollars from the deception” (¶159), the hundreds of paragraphs that follow allege only that the Individual Directors received information about marketing and Purdue’s other activities, but not that they performed or directed any deceptive acts. *See supra* at 9-22. The Court

³² *See* Boer Decl. ¶4(c); Costa Decl. ¶4(c); Lefcourt Sackler Decl. ¶4(c); Lewent Decl. ¶4(c); Pickett Decl. ¶4(c); B. Sackler Decl. ¶4(c); D. Sackler Decl. ¶4(c); J. Sackler Decl. ¶4(c); K. Sackler Decl. ¶4(c); M. Sackler Decl. ¶4(c); R. Sackler Decl. ¶4(c); T. Sackler Decl. ¶4(c); and Snyderman Decl. ¶4(c).

in *Access TCA, Inc. v. Brand Architecture & Mgmt., LLC*, No. 060496, 2006 WL 4114313, at *2 (Mass. Super. Ct. Nov. 21, 2006), held that § 3(c) was not satisfied in similar circumstances:

It is true that paras. 33–40 of the Complaint contain a heading which reads: “Defendants Solicit Access Employers,” and that such conduct would be tortious. . . . But the actual allegations in those paragraphs of the Complaint, as distinguished from the heading, do not allege such solicitation but only planning discussions between [defendant] and the other at-will employees which, as discussed above, was not illegal. In short, no substantive basis has been shown for jurisdiction under § 3(c).

Id. (emphasis omitted). Here, too, because no intentional tort by any Individual Director has been—or can be—factually alleged, there is no basis for jurisdiction under § 3(c).

C. The Individual Directors’ Alleged Conduct Does Not Suffice to Confer Jurisdiction Under § 3(d)

Section 3(d)—the third and final claimed statutory basis for asserting long-arm jurisdiction (¶¶862-73)—authorizes personal jurisdiction over a defendant who “[1] caus[es] tortious injury in this commonwealth by an act or omission outside this commonwealth” if the defendant “[2] regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this commonwealth.” G.L., c. 223A, § 3(d). Section 3(d)’s requirements are not satisfied as to any Individual Director.

As a threshold matter, § 3(d) jurisdiction fails because the FAC’s conclusory allegations do not adequately plead that any Individual Director caused a tortious injury in the Commonwealth. The Commonwealth claims that § 3(d) applies because the Individual Directors “voted for, directed, and/or managed Purdue’s misconduct, which killed hundreds of people in Massachusetts” (¶863), but the FAC alleges nothing of the sort. On the contrary, the FAC repeatedly, flagrantly, and demonstrably misstates the involvement of the Individual Directors as reflected in the documents it cites. (¶¶862-73; *see supra* at 9-22). *See Noonan v. Winston Co.*,

902 F. Supp. 298, 306 & n.14 (D. Mass. 1995) (§ 3(d) not satisfied where plaintiff alleged tortious injury committed “on behalf and with the approval of the . . . defendants” but failed to “connect this harm to any ‘act’ attributable to [those] defendants”), *aff’d*, 135 F.3d 85 (1st Cir. 1998); *Zises v. Prudential Ins. Co. of Am.*, No. CA-80-1886-Z, 1981 WL 27044, at *4 (D. Mass. Mar. 10, 1981) (“[W]hile [defendant] was Chairman of the Board . . . , plaintiff has failed to allege that [defendant] committed any specific act Jurisdiction over defendant . . . therefore cannot be predicated on either section 3(c) or 3(d), since both sections require allegations that defendant committed a tortious act against plaintiff.”); *Whistler Corp. v. Solar Elecs., Inc.*, 684 F. Supp. 1126, 1131 n.5 (D. Mass. 1988) (concluding that the § 3(d) analysis of “tortious injury” “would apply to the meaning of tortious injury within subsection 3(c)”).

Nor does the FAC satisfy the second prong of the § 3(d) analysis, which requires that each Individual Director have “substantial revenue” from or do “regular[]” “business” in Massachusetts. The Commonwealth alleges (¶¶864-68) that the Individual Directors derived substantial revenue from Massachusetts, either because (i) they were “paid . . . for their positions on the Board” of PPI, a New York corporation headquartered in Connecticut (¶¶6, 867-68), or (ii) for some Individual Directors, because PPLP and PPI (a Delaware limited partnership and a New York corporation, respectively) made distributions of about \$4.3 billion, of which about \$120 million, or 2.8%, the Commonwealth estimates were derived from “from Massachusetts.” (¶¶6, 866; *see also* ¶239 & n.157). These allegations are unsustainable as a basis for personal jurisdiction. If a director or officer could be subject to personal jurisdiction simply because a company on whose Board they serve earned a percentage of revenue from a given state, they would be “put to the Hobson’s choice of either working for free or facing personal liability” everywhere the company does business. *Birbara v. Locke*, 99 F.3d 1233, 1241 (1st Cir. 1996). That is irreconcilable with

the cases consistently rejecting the notion that directors are liable for the conduct of their corporation. The Commonwealth's argument, if accepted, would also make shareholders subject to jurisdiction everywhere the company does business if they receive distributions on their equity interests. This outcome is flatly contrary to Massachusetts law, which allows piercing of the corporate veil to reach shareholders only in "rare" situations not pled here. *Evans v. Multicon Constr. Corp.*, 30 Mass. App. Ct. 728, 732 (1991).

Section 3(d)'s "substantial revenue" element cannot be satisfied by reference to revenues earned by a separate entity and "does not extend" to allegations of "indirect dealings with the forum;" it is similarly insufficient to establish that one party "benefitted from sales" by another party of products in Massachusetts. *Merced v. JLG Indus., Inc.*, 193 F. Supp. 2d 290, 293-94 (D. Mass. 2001) (§ 3(d)'s substantial revenue prong not satisfied by foreign corporation's "indirect dealings with the forum"). The FAC's failure to allege that any Individual Director earned "substantial revenue" from his or her individual employment in Massachusetts or the direct sale of any goods or services in Massachusetts is dispositive. *See Cambridge-Lee Indus., Inc. v. Acme Ref. Co.*, No. CA-003726, 2005 WL 3047406, at *4 (Bos. Mun. Ct. Nov. 8, 2005) ("substantial revenue" requirement not satisfied by payment for services "rendered in Illinois. That the payments originated in Massachusetts is insufficient to satisfy . . . § 3(d)").³³

³³ See also *Vasquez v. Whole Foods Mkt., Inc.*, 302 F. Supp. 3d 36, 49 (D.D.C. 2018) ("Even if the court accepts that [the corporate defendant] derived substantial revenue . . . , it would not necessarily follow that [individual defendant] did so as well."); *John Gallup & Assocs., LLC v. Conlow*, No. 1:12-CV-03779-RWS, 2013 WL 3191005, at *9 (N.D. Ga. June 21, 2013) ("Defendant's salary [from a Georgia corporation] does not indicate that Defendant derived substantial revenue from goods used or consumed or services rendered in this state."); *Hartsel v. Vanguard Grp., Inc.*, C.A. No. 5394-VCP, 2011 WL 2421003, at *12 (Del. Ch. June 15, 2011) (dismissing claims against non-resident trustees of corporate defendant, noting lack of "case law or other authority for the proposition that a defendant-employee's receipt of a salary . . . is a sufficient contact . . . to confer personal jurisdiction over that defendant"), *aff'd*, 38 A.3d 1254 (Del. 2012).

Alternatively, the Commonwealth conclusorily alleges that “many defendants” “regularly do business or engage in a persistent course of conduct in Massachusetts” (¶873; *see also* ¶¶880-87). But the FAC makes no effort to plead any “regular[] . . . business” or “persistent course of conduct” in Massachusetts by Mr. Boer, Mr. Costa, Ilene Sackler Lefcourt, Kathe Sackler, or Theresa Sackler, so they are clearly not among the “many defendants” to whom this § 3(d) analysis purports to apply.

The FAC’s allegations concerning the remaining Individual Directors similarly fail to show engagement in any type of persistent conduct in Massachusetts. None of the Individual Directors is alleged to live or be domiciled in Massachusetts, and none worked in Massachusetts at any time relevant to the Claims against them—*i.e.*, after May 15, 2007 and during their respective tenures as directors of Purdue.³⁴ To the extent that any Individual Director allegedly served as a director, officer or advisor to a charitable institution or other entity in Massachusetts during the Period (¶¶880-83, 885-87), that is jurisdictionally irrelevant because jurisdiction over that entity does not confer jurisdiction over its directors, officers or employees. *See Morris*, 66 Mass. App. Ct. at 720. Similarly, an investment in a Massachusetts entity (*see* ¶¶880, 882, 887) does not satisfy § 3(d)’s “business” requirement. *See Biopharma Capital, Ltd. v. Lydon*, No. 01-1926, 2002 WL 31957013,

³⁴ Alleged Massachusetts contacts that pre-date May 15, 2007—or that precede or follow their respective service on the Board—cannot support jurisdiction because the relevant inquiry is “the defendant’s contacts at the time the cause of action arose.” *Fletcher*, 89 Mass. App. Ct. at 725. Therefore, Massachusetts contacts prior to May 15, 2007—including Mortimer Sackler’s Massachusetts residence in the 1990s (¶884), and various board memberships and other activities of Ms. Lewent, Mr. Pickett, Beverly Sackler, Jonathan Sackler, Richard Sackler, and Dr. Snyderman (¶¶880, 881, 883, 885-87)—cannot support § 3(d) jurisdiction. Equally irrelevant are allegations that pre- or post-date any Director’s Board membership, including pre-2009 and post-2014 allegations regarding Ms. Lewent (¶885), pre-2010 allegations regarding Mr. Pickett (¶886), and pre-2012 allegations regarding Dr. Snyderman (¶887).

at *4 (Mass. Super. Ct. Dec. 2, 2002) (“ownership of stock in a Massachusetts corporation is not, without more, evidence of a jurisdictional contact”).

At most, the FAC alleges that a few Individual Directors occasionally traveled to Massachusetts for various business purposes unrelated to Purdue’s marketing of prescription opioids. But occasional visits to Massachusetts are insufficient to satisfy Section 3(d). *See, e.g., Chase-Walton*, 2002 WL 31235508, at *5 (three trips to and one lunch in Massachusetts held “isolated contacts . . . insufficient to satisfy the requirements of § 3(d)”); *Kolikof v. Samuelson*, 488 F. Supp. 881, 884 (D. Mass. 1980) (“infrequent visits together with the two telephone calls” do not satisfy § 3(d)); *Backman v. Schiff*, 84 F.R.D. 132, 137 (D. Mass. 1979) (“sporadic contacts with Massachusetts are inadequate to bring him . . . within” section 3(d)).

Even assuming that the technical requirements of § 3(d)’s “regular business” prong could be satisfied as to any Individual Director—and they cannot—the Commonwealth’s attempt to invoke § 3(d) as a specific jurisdiction statute (*see* ¶862), is unsustainable. Personal jurisdiction jurisprudence draws a clear line between general and specific jurisdiction. *Walden v. Fiore*, 571 U.S. 277, 283 n.6 (2014). The weight of Massachusetts authority holds that “§ 3(d) can support only general jurisdiction.” *Fletcher*, 89 Mass. App. Ct. at 724 (“the cases tend to support [that]”). *See also MerlinOne, Inc. v. Shoom, Inc.*, No. 0402022, 2005 WL 2524362, at *2 (Mass. Super. Ct. July 1, 2005) (“§ 3(d) is predicated on general jurisdiction”).³⁵ The FAC exclusively pleads “specific jurisdiction”—which “depends on an affiliation between the forum and the underlying controversy,” *Walden*, 571 U.S. at 283 n.6—under both the long-arm statute (¶¶842, 852, 862) and

³⁵ *See also Fern v. Immergut*, 55 Mass. App. Ct. 577, 581 n.9 (2002) (noting that no “claim of general jurisdiction [was] asserted under section 3(d)”; *Conn. Nat’l Bank v. Hoover Treated Wood Prods., Inc.*, 37 Mass. App. Ct. 231, 233 n.6 (1994) (“§ 3(d) is predicated on general jurisdiction.”); *Noonan v. Winston Co.*, 135 F.3d 85, 92-94 (1st Cir. 1998) (analyzing section 3(d) as a theory of general jurisdiction).

the federal Constitution (§874). The FAC therefore cannot rely on § 3(d), which “would only apply if general jurisdiction existed.” *Pettengill*, 584 F. Supp. 2d at 357 (holding that because there was no general jurisdiction, plaintiff could not rely on § 3(d)). Section 3(d) is thus inapposite and cannot support long-arm jurisdiction over any Individual Directors under any analysis. In any case, as set forth in Section III.A, *infra*, as a constitutional matter, this Court cannot assert general jurisdiction over any Individual Director.

Consequently, the Commonwealth has failed to, and cannot, meet its burden to show that the long-arm statute authorizes the exercise of personal jurisdiction over any of the Individual Directors.

III. EXERCISING PERSONAL JURISDICTION OVER THE INDIVIDUAL DIRECTORS WOULD VIOLATE DUE PROCESS

Even if any Individual Director were within the reach of the long-arm statute—and none is—the exercise of personal jurisdiction would violate constitutional due process under binding Supreme Court precedent. All of the Supreme Court’s cases addressing personal jurisdiction in this century—6 in the last 7½ years—make it clear that due process is not satisfied where, as here, a non-resident defendant does not have substantial, suit-related contacts with the forum state.³⁶ Those decisions compel dismissal of the claims against each Individual Director.

³⁶ See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 885-87 (2011) (plurality opinion) (no personal jurisdiction over manufacturer of product sold by third party to a customer in state); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919-20 (2011) (no personal jurisdiction over company that regularly sold products in state because claims did not arise from those sales); *Daimler AG v. Bauman*, 571 U.S. 117, 134-36 (2014) (no personal jurisdiction over parent company with subsidiary operating in state because claims against parent did not arise from its contacts with state); *Walden*, 571 U.S. at 288-89 (no personal jurisdiction over defendant whose conduct was not in or directed at the forum state, even though the foreseeable effects of defendant’s conduct were felt in the forum state); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1553-54 (2017) (no personal jurisdiction over railroad with over 2,000 miles of track in state because claims were not based on railroad’s contacts with state); *Bristol-Myers Squibb Co. v. Superior Court of Cal.*,

A. The Individual Directors Are Not Subject to General Personal Jurisdiction

The FAC does not allege that due process permits the exercise of general jurisdiction over any Individual Director in Massachusetts. Nor can it, since—as the FAC concedes (§11)—none of them is domiciled in the Commonwealth. As the U.S. Supreme Court made clear:

[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile

Daimler, 571 U.S. at 137.

B. The Individual Directors Are Not Subject to Specific Jurisdiction

Specific jurisdiction under the Constitution “depends on an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum . . . and is therefore subject to [its] regulation.” *Goodyear*, 564 U.S. at 919. A court may find specific jurisdiction only upon a showing that (1) the defendant’s contacts with the forum “represent a purposeful availment of the privilege of conducting activities in the forum State,” and (2) the Claims “directly arise out of, or relate to, the defendant’s forum-State activities.” *Openrisk, LLC v. Roston*, No. 15-P-1282, 2016 WL 5596005, at *4 (Mass. App. Ct. Sept. 29, 2016).

The FAC does not plead that any conduct by the Individual Directors related to the Commonwealth’s Claims took place in Massachusetts. None did. *See supra* at 5-10. Many Individual Directors (Peter Boer, Paulo Costa, Ilene Sackler Lefcourt, Kathe Sackler, and Theresa Sackler) are not alleged to have any personal contacts in Massachusetts at all. To the extent that the other Individual Directors are alleged to have, or have had, contacts with Massachusetts (§§880-87), none of the Claims arises out of or relate to those contacts. *See Harlow v. Children’s*

137 S. Ct. 1773, 1783-84 (2017) (no personal jurisdiction over manufacturer with laboratories and hundreds of employees in state because plaintiff’s claims did not arise out of contacts with state).

Hosp., 432 F.3d 50, 61 (1st Cir. 2005) (“the forum-based activity [must] be truly related to the cause of action”); *Saeed v. Omex Sys., Inc.*, No. 16-CV-11715-ADB, 2017 WL 4225037, at *9 & n.7 (D. Mass. Sept. 22, 2017) (claim did not relate to the defendant’s in-state activities where plaintiff did not argue that defendant “specifically was involved in sending the . . . letter, which is the sole basis for his relatedness argument”). It is beyond dispute that “a defendant’s general connections with the forum are not enough” to support the exercise of specific personal jurisdiction over any Individual Director in this case. *Bristol-Myers*, 137 S. Ct. at 1781 (for specific personal jurisdiction, “unrelated” forum contacts are not “sufficient — or even relevant”).

The Commonwealth’s attempt to establish jurisdiction over the Individual Directors based on Purdue’s conduct in Massachusetts has been explicitly rejected by the U.S. Supreme Court. Specific jurisdiction over a corporate director must be based on the director’s *own* conduct and cannot be based on the corporation’s. See *Keeton*, 465 U.S. at 781 n.13; *supra* at 23-24. The constitutional mandate is that the defendant’s personal “suit-related conduct must create a substantial connection with” the forum, and the substantial connection “must arise out of contacts that the defendant *himself* creates with the forum.” *Walden*, 571 U.S. at 284 (emphasis in original). There is no authority for the proposition that the acts of a corporation subject corporate directors to personal jurisdiction. To the contrary, “the situation where there is jurisdiction over a company but not its officers is not uncommon.” *Confederate Motors, Inc. v. Terny*, 831 F. Supp. 2d 405, 414 (D. Mass. 2011).

If a plaintiff attempts to premise jurisdiction on a corporation’s activities, the plaintiff must factually allege that the corporate officials were “primary participant[s] in the alleged wrongdoing.” *Wang*, 2011 WL 6148579, at *5; see *Grice*, 280 F. Supp. 3d at 279 (“[P]laintiffs must sufficiently detail each defendant’s conduct so as to persuade a court that the defendant was

a primary actor in the specific matter in question”). The Commonwealth has not pled such involvement by the Individual Directors here by asserting that they attended Board meetings, received reports and otherwise acted as directors. *See Kleinerman*, 26 Mass. App. Ct. at 825 (dismissing claims against directors who were merely alleged to have attended board meetings).

Allegations that the Individual Directors were “told,” “knew,” or “tracked” information about Massachusetts because it was contained in Reports sent to some or all of them, *see, e.g., supra* at 10 & n.11, do not allege that any Individual Director undertook any act at all, much less any act purposefully aimed at Massachusetts. References to Massachusetts (among other states) in some materials the Individual Directors *received* do not constitute acts by them aimed at the Commonwealth and are not contacts sufficient to put them on reasonable notice of the possibility of being haled into court here. *See Preferred Mut., Ins. Co. v. Stadler Form AG*, 308 F. Supp. 3d 463, 470 (D. Mass. 2018) (“awareness alone” that products will reach Massachusetts “is not enough” to satisfy “voluntary” or “foreseeable” due process requirements for jurisdiction). “[M]ere awareness” of relevant facts is not enough to show that the Individual Directors “purposefully availed themselves of Massachusetts law.” *Saeed*, 2017 WL 4225037, at *6.

To the extent the Commonwealth alleges that the Individual Directors failed to supervise or prevent Purdue’s alleged misconduct in Massachusetts, that does not support the exercise of personal jurisdiction. As *Pettengill* observed, “attempts to transform a failure to act that was directed nowhere in particular into a purposeful availment of the laws of one specific state” are routinely rejected. 584 F. Supp. 2d at 358-59 (“tortious failure to act” cannot “provide the required minimum contacts with a forum state.”); *see also Chlebda*, 609 F.2d at 1024 (no minimum contacts where the “very complaint is that defendant did nothing”); *Pettengill*, 584 F. Supp. 2d at 359 (“If the Individual Defendants are subject to personal jurisdiction in Massachusetts, they are subject to

personal jurisdiction everywhere. Such a conclusion would eviscerate the minimum contacts test for satisfying the requirements of due process.”).

None of the allegations purporting to show that the Individual Directors “directed” conduct into the Commonwealth identifies:

- Any written or oral communication between any Individual Director and anyone in Massachusetts related to this action,
- Any direction by any Individual Director to anyone to distribute any specific piece of marketing material in Massachusetts;
- Any specific action in Massachusetts that any Individual Director ordered; or
- Any affirmative act by any Individual Director purposefully directed into Massachusetts that is related to the subject matter of the Commonwealth’s Claims.

See supra at 9-22. *See Copia Commc’ns, LLC v. AM Resorts, L.P.*, 812 F.3d 1, 5 (1st Cir. 2016) (“In determining whether the purposeful availment condition is satisfied, [the] key focal points are the voluntariness of the defendants’ relevant Massachusetts contacts and the foreseeability of the defendants falling subject to Massachusetts’ jurisdiction.”).

At most, the FAC’s allegations show that the Individual Directors were told about the nationwide marketing of Purdue products. That does not show that they targeted Massachusetts and does not support jurisdiction here. As Justice Kennedy explained in *McIntyre Mach.*, 564 U.S. at 885-86 (plurality opinion), even facts that “may reveal an intent to serve the U.S. market . . . do not show that [the defendant] purposefully availed itself of [a particular state’s] market.” *Accord id.* at 891-92 (Breyer, J., concurring in judgment). Courts consistently reject attempts to predicate personal jurisdiction over a corporate officer and director based on their involvement in nationwide marketing. *See, e.g., Mouzon v. Radiancy, Inc.*, 85 F. Supp. 3d 361, 372 (D.D.C. 2015) (dismissing

for lack of personal jurisdiction claims against a CEO because “[e]ven if [he] played a central and dominant part” in the campaign and “directly profited” from it, the plaintiffs “ha[d] not alleged that [he] himself targeted” the marketing campaign at D.C.).³⁷

In sum, the Commonwealth has not carried its burden of showing that exercising personal jurisdiction over the Individual Directors would be consistent with the federal Constitution, and the key jurisdictional allegations are categorically refuted by the Individual Directors’ sworn declarations. The Court should therefore not permit this action to proceed against them.

CONCLUSION

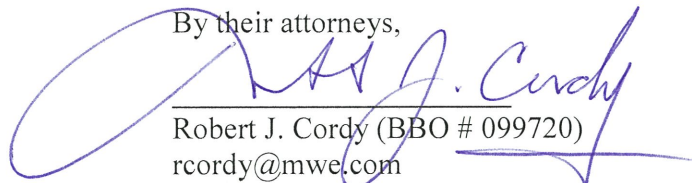
For the reasons outlined above, exercise of jurisdiction over the Individual Directors would violate the Massachusetts long-arm statute in unprecedented ways by subjecting directors to personal jurisdiction anywhere the corporation on whose board they serve does business and is irreconcilable with constitutional due process under well-established U.S. Supreme Court and Massachusetts case law. The Claims against the Individual Directors should therefore be dismissed with prejudice.

³⁷ Cases repeatedly hold that nationwide marketing does not support personal jurisdiction in a specific state. *See, e.g., Federated Rural Elec. Ins. Corp. v. Kootenai Elec. Coop.*, 17 F.3d 1302, 1305 (10th Cir. 1994) (advertising “in nationally distributed papers or journals does not rise to the level of purposeful contact with a forum required by the Constitution in order to exercise personal jurisdiction over the advertiser”); *PS Audio, Inc. v. Allen*, Civ. No. 18-00206-WJM-STV, 2018 U.S. Dist. LEXIS 221458, at *13-14 (D. Colo. Aug. 10, 2018) (Report & Recommendation) (gathering cases rejecting personal jurisdiction “in the context of broad advertising by the out-of-state defendant”), *adopted by* 2018 U.S. Dist. LEXIS 221457 (D. Colo. Sept. 17, 2018).

Respectfully submitted,

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Date: April 1, 2019